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*Lawyers for Intervenor-Defendant the Coalition for the Protection of Marriage*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

BEVERLY SEVCIK et al.,	)	Case No.: 2:12-cv-00578-RCJ-PAL
	)	
Plaintiffs,	)	1) <b>MOTION TO IMMEDIATELY</b>
vs.	)	<b>STAY DISCOVERY PENDING</b>
	)	<b>RULING ON MOTION TO</b>
BRIAN SANDOVAL, etc., et al.,	)	<b>INTERVENE;</b>
	)	
Defendants,	)	2) <b>MEMORANDUM IN SUPPORT</b>
	)	
and	)	3) <b>APPENDIX IN SUPPORT</b>
	)	
COALITION FOR THE PROTECTION	)	
OF MARRIAGE,	)	<b><u>EXPEDITED TREATMENT</u></b>
	)	<b><u>REQUESTED BEFORE JULY 3, 2012</u></b>
Intervenor-Defendant.	)	
	)	

**MOTION FOR STAY**

Intervenor-defendant, the Coalition for the Protection of Marriage (“Coalition”) moves for an immediate and temporary stay of discovery pending this Court’s ruling on the Coalition’s motion to intervene in this civil action as a party defendant. This motion is made pursuant to Federal Rule of Civil Procedure 26(c) and the Court’s generally accepted authority to stay discovery as articulated in *Landis v. North Am. Water Works and Elec. Co.*, 299 U.S. 248, 254 (1936) and related case law.

This Motion is made on an expedited basis in light of two filings: 1) Notice of Taking Deposition of Diana Alba Clark County Clerk and 2) Notice of Taking Deposition of Amy Harvey Washoe County Clerk. A copy is attached to the Supporting Appendix. That appendix is referenced hereafter as “App.” The depositions for Ms. Harvey and Ms. Alba have been noticed up for July 3, 2012 and July 9, 2012 respectively. App. 3-5 and 6-9. Furthermore, counsel for the coalition has left repeated voice messages and emails to Nevada Attorney General’s Office (“AGO”) requesting that the above-identified depositions be postponed and informing the AGO that if those depositions are not rescheduled the Coalition will be filing the present motion to stay discovery. App. 1. Hearing no response from the AGO, and making a sincere and good faith effort to resolve the matter, the Coalition now moves forward with the present motion on an expedited basis because of the substantial prejudice that will result in the event the depositions of Ms. Harvey and Ms. Alba are permitted to go forward.<sup>1</sup> See App.1.

This motion is supported by the points and authorities in the following Memorandum in Support and the Supporting Appendix.

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<sup>1</sup> A detail description of the efforts made to resolve this matter is set forth in the Affidavit of Daniel W. Bower contained in the following Supporting Appendix.

**MEMORANDUM IN SUPPORT****INTRODUCTION**

The Coalition moved to intervene in this civil action as a party defendant, pursuant to Federal Rule of Civil Procedure 24(a)(2) and (b)(1)(B). The very purpose of that motion was to reserve a seat at the litigation table--to gain access to the Courts and to be in a position to protect the Coalition's rights and interests pertaining to the constitutionality of the Marriage Amendment. *See United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002) (recognizing that intervention by nonparties furthers the policy interests of "efficient resolution of issues and broadened access to the courts.") This Court has not yet ruled on the Coalition's motion. However, there can be no question that the parties recognize the impact of having the Coalition as a party to the lawsuit and are attempting now to minimize that impact. Such action is improper and circumvents the purposes and reasons behind intervention. The impropriety of these improper acts is most clearly evidenced by the need for the present motion to temporarily stay discovery pending the Court's ruling on the motion to intervene. A stay is necessary only because of the presently constituted parties' orchestrated plan and insistence to move forward with discovery before this Court has ruled on the Coalition's motion to intervene. Indeed, the rush to conduct discovery without input or participation by the Coalition is an implicit admission of the important role the Coalition can play in this matter--the only party ready, willing and able to defend the constitutionality of the Marriage Amendment. Thus, the purpose of the present motion for a temporary stay is to prevent an end run around the Coalition's prior motion.

Specifically, the Coalition requests that the two pending depositions hastily scheduled for July 3rd and 9th--well before the Court can rule on the motion to intervene--be postponed until this Court rules on the pending motion. The Coalition has made repeated attempts to postpone

1 these depositions by placing phone calls and emails to the Nevada Attorney General's Office  
2 ("AGO"). Those communications have not been returned necessitating the present expedited  
3 motion. In light of the non-response and in an effort to conserve judicial resource, the Coalition  
4 further requests that any other discovery also be stayed temporarily pending this Court's ruling  
5 on the motion to intervene. Without such protective action by this Court, the Coalition faces  
6 substantial prejudice by having no place and no say in the initial stages of discovery.  
7

#### 8 LEGAL STANDARDS

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10 Under Rule 26(c), a court enjoys the discretion to stay discovery "for good cause." *See*  
11 *Landis v. North Am. Water Works and Elec. Co.*, 299 U.S. 248, 254-55 (1936) ("[T]he power to  
12 stay proceedings is incidental to the power inherent in every court to control the disposition of  
13 the cases on its docket with economy of time and effort for itself, for counsel, and for litigants.  
14 How this can best be done calls for the exercise of judgment, which must weigh competing  
15 interests and maintain an even balance."). To justify a request for a stay, the moving party "must  
16 make out a clear case of hardship or inequity ... if there is even a fair possibility that the stay for  
17 which he prays will work damage to someone else." *See Williford v. Armstrong World Indus.,*  
18 *Inc.*, 715 F.2d 124, 127 (4th Cir. 1983). A trial court's decision to allow or deny discovery is  
19 reviewable only for abuse of discretion. *Rae v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984)  
20 (citing *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 n.1 (9th Cir.  
21 1977)).  
22  
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24 As explained more fully below, there is good cause to temporarily stay discovery as the  
25 present discovery is not reasonable considering the circumstances. Moreover, granting a  
26 temporary stay does not harm or prejudice any of the existing parties. Accordingly, the Court  
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1 should exercise its discretion and temporarily postpone discovery pending the Court's ruling on  
 2 the Coalition's motion to intervene.

### 3 DISCUSSION

#### 4 *I. A Stay Is Necessary To Protect The Integrity Of The Motion To Intervene And To Protect* 5 *The Coalition's Right To Participate In Discovery*

6 The very purpose of a motion to intervene is to permit non-parties to protect their rights  
 7 and interests affected by litigation by joining the lawsuit. *See, e.g., Wilderness Soc. v. United*  
 8 *States Forest Service*, 630 F.3d 1173, 1179 (9th Cir. 2011). The Coalition's motion to intervene  
 9 was lodged immediately after the filing of the Complaint and before any responsive pleading was  
 10 filed by any of the named defendants. The timing of the Coalition's motion to intervene is key.  
 11 The objective of the Coalition's timely filed motion was to enable Coalition participation from  
 12 the very beginning of this litigation. Stated differently, the purpose of the Coalition's motion to  
 13 intervene was to protect the Coalition's interests at all stages of litigation, including discovery.  
 14 Here, that purpose is not respected. Instead, there is a blatant attempt to exclude the Coalition  
 15 from any meaningful influence regarding the initial discovery process including participation in  
 16 the depositions of defendant-witnesses prior to the Coalition potentially being a party to this  
 17 action. This action cannot be condoned as it defeats the intent of nonparty intervention as  
 18 contemplated by the federal rules.  
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22 Because of the early stage of the litigation, the Coalition did not move for a stay of  
 23 discovery although clearly entitled to do so. *See e.g., In re Application of Alves Braga*, 789 F.  
 24 Supp. 2d at 1307. At the time the Coalition filed its timely motion to intervene, no discovery  
 25 was pending and there was no apparent need for a stay. The need for a stay is now clearly  
 26 apparent. The named parties are attempting to conduct discovery, to the detriment of the  
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1 Coalition, regardless of the pending the pending motion--a motion that would make the Coalition  
2 a party defendant.

3 On June 1, 2012, the existing parties filed a proposed scheduling order ("PSO") (D.I. 39).  
4 As explained more fully in the Coalition's Objection to "Stipulated Discovery Plan and  
5 Scheduling Order" (D.I. 43), the PSO was orchestrated between the parties in haste and without  
6 giving notice of any kind to the Coalition's counsel. The PSO proposed a truncated discovery  
7 plan with unreasonable deadlines that can only be construed as an attempt to prevent the  
8 Coalition from playing a meaningful role in this action. Notwithstanding the Coalition's  
9 objection to the PSO or a ruling by this Court on either the objection or the Coalition's motion to  
10 intervene, the parties continued their plan to exclude the Coalition by hurriedly scheduling  
11 depositions and issuing subpoenas. The timing of the requested discovery is telling.  
12 Notwithstanding the pending motions and objections, the Coalition received notice of the named-  
13 party depositions on June 25th and 26th. *See* App. 3-5 and 6-9. The depositions were set on July  
14 9th and July 3rd--well before this Court would be in a position to rule on the motion to intervene  
15 or on the objection to the PSO. Furthermore, despite repeated attempts by the Coalition to  
16 postpone the depositions, those communications have been ignored. In short, the timing of the  
17 requested discovery can only be interpreted as an attempt to exclude the Coalition from  
18 participation and rushed attempt to avoid the impact of the intervention in the event this Court  
19 grants the Coalition's motion to intervene. Thus, in consideration of all the various factors, a  
20 temporary stay is justified.

21 That justification is further made clear when evaluating potential harm and prejudices.  
22 Clearly, there is no prejudice if the depositions are delayed. However, if discovery is not  
23 delayed and the Coalition is not a participant in the discovery, the Coalition cannot protect its  
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1 rights and interests. A full discussion of those rights and interests can be found in the briefing in  
2 support of the motion to intervene. (D.I. 30) A discussion of the prejudice resulting from the  
3 Coalition's absence in the discovery process is set forth in the Coalition's Objection to Stipulated  
4 Discovery Plan and Discovery Order. (D.I. 43) Both discussions are incorporated by reference.  
5 It suffices to say that there is no reason for rushing forward with the depositions now other than  
6 to exclude Coalition participation. Again, this is an implicit admission of the important role the  
7 Coalition will play if this Court grants the motion to intervene. To protect that role as well as the  
8 integrity of the intervention process set forth in Rule 26 of the Federal Rules of Civil Procedure,  
9 the Coalition respectfully submits that this Court should stay pending and future discovery  
10 pending a ruling on the motion to intervene.  
11

12  
13 *II. Given The Timing Of The Harvey And Alba Depositions, This Motion Must Be Heard On*  
14 *An Expedited Basis To Prevent Substantial Prejudice To The Coalition*

15 The Coalition's request that this motion be heard on an expedited basis is an extension of  
16 the arguments presented above. As explained above, the temporary stay is the only means of  
17 protecting the Coalition's rights in discovery. As set forth in the following Affidavit of Daniel  
18 W. Bower (App. 1), the Coalition made a sincere effort to resolve this matter prior to the filing of  
19 this motion. Moreover, given the timing of the notices of deposition and the short time frame  
20 involved--approximately one week--the AOG has made it impossible to challenge its actions  
21 other than by expedited means. *See* App. 3-5 and 6-9. In short, there is good cause for hearing  
22 this motion on an expedited basis. Given the importance of the issue and the potential prejudice  
23 involved--not being able to participate in discovery--the Coalition respectfully requests this  
24 matter be heard on an expedited basis.  
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CONCLUSION

In light of the foregoing, we respectfully request that this Court schedule an expedited hearing prior to **10 a.m. (Pacific Time) on Tuesday, July 3, 2012** to consider our motion to enter an order temporarily staying discovery until this Court rules on the Coalition's motion to intervene.

Dated: June 29, 2012

/s/ Monte Neil Stewart

Monte Neil Stewart (Nevada Bar No. 1459)

Craig G. Taylor (Admitted *pro hac vice*)

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*Lawyers for Intervenor-Defendant the Coalition for  
the Protection of Marriage*



**CERTIFICATE OF SERVICE**

I hereby certify that on June 29, 2012, the foregoing document was filed with the Clerk of the Court for the United States Court, District of Nevada by using the CM/ECF system.

The following parties received copies electronically:

Jon W. Davidson – jdavidson@lambdalegal.org  
Tara L. Borelli – tborelli@lambdalegal.org  
Peter C. Renn – prenn@lambdalegal.org  
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Michael Foley – michael.foley@ccdandv.com  
Herbert Kaplan - hkaplan@da.washoecounty.us  
Randal Munn – rmunn@carson.org

/s/Monte N. Stewart

Monte N. Stewart

**APPENDIX IN SUPPORT OF  
MOTION TO IMMEDIATELY STAY DISCOVERY PENDING  
RULING ON MOTION TO INTERVENE**

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**AFFIDAVIT OF DANIEL W. BOWER**

State of Idaho                     )  
  ) ss  
County of Ada                    )

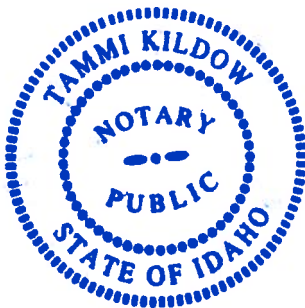
I, Daniel W. Bower, being first duly sworn testify of my own personal knowledge that:

1. I am one of the lawyers representing the Coalition for the Protection of Marriage (“Coalition”) relative to *Sevcik et al. v. Sandoval, etc., et al.*, Case No.: 2:12-cv-00578-RCJ-PAL, United States District Court for the District of Nevada (“this case”).
2. On Tuesday, June 26, 2012, at 2:35 p.m. (mountain time) our office received an email from Vicki Beavers, Secretary to C. Wayne Howle, notifying us of Diana Alba’s deposition scheduled for Monday, July 9, 2012, at 10:00 a.m. in Las Vegas, Nevada.
3. On Tuesday, June 26, 2012, at 5:21 p.m. (mountain time) our office received a second email from Vicki Beavers advising that the deposition of Amy Harvey was scheduled for July 3, 2012 at 10 a.m. in Reno, Nevada.
4. On June 27<sup>th</sup> and June 28<sup>th</sup> my firm made several attempts to call Messrs. Keith Munro, Stephen Quinn and C. Wayne Howle in the Nevada Attorney General’s office (“AGO”) to request that the depositions be postponed.
5. The purpose of the phone calls and subsequent voice message was to discuss the July 3, 2012 and July 9, 2012 depositions of Ms. Harvey and Ms. Alba and to request that the AGO postpone those depositions.
6. Hearing no response from the AGO, on June 29, 2012, my office sent an email to Mr. Munro, as well as Stephen Quinn, and C. Wayne Howle. In that email we made clear that if we did not hear back from the AGO by 1:00 p.m (mountain time) we would be compelled to file an expedited motion to stay.

7. As of the filing of this affidavit and related documents, my office has not received a response from the AGO.
8. Accordingly, there has been no consent to a hearing on an expedited basis.
9. It is anticipated that the hearing on the expedited motion would be relatively short, less than an hour. A list of the office address and telephone numbers of the movant and all affected parties follows this affidavit.
10. As explained in the above supporting memorandum, the Coalition will suffer substantial prejudice if the Court does not enter an order temporarily staying discovery.

  
Daniel W. Bower

SUBSCRIBED AND SWORN TO before me June 29<sup>th</sup>, 2012.



  
Notary Public

Residing at Bonise ID

My Commission Expires: 6/21/13

1 CATHERINE CORTEZ MASTO  
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2 C. WAYNE HOWLE  
Solicitor General  
3 WHowle@ag.nv.gov  
Nevada State Bar #3443  
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Attorneys for Governor Brian Sandoval

7  
8  
9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF NEVADA**

11  
12 BEVERLY SEVCIK, et al.

13 Plaintiffs,

14 vs.

15 GOVERNOR BRIAN SANDOVAL, acting in  
his official capacity, et al.,

16 Defendants.  
17

CASE NO. 2:12-CV-00578-RCJ-PAL

**NOTICE OF TAKING DEPOSITION  
OF AMY HARVEY  
WASHOE COUNTY CLERK**

18 TO: ALL INTERESTED PARTIES

19 PLEASE TAKE NOTICE that on Tuesday, July 3, 2012 at 10 a.m., Defendants,  
20 Governor Brian Sandoval, acting in his official capacity, by and through counsel, Nevada  
21 Attorney General Catherine Cortez Masto and Solicitor General C. Wayne Howle, will take the  
22 deposition of Amy Harvey, Washoe County Clerk, upon oral examination pursuant to Federal  
23 Rules of Civil Procedure 26 and 30, before an officer authorized to administer oaths who is  
24 neither a party to nor interested in the above entitled action. The deposition will take place at  
25 Sunshine Reporting Services, 151 Country Estates Circle, Reno, NV 89511-4014, telephone  
26 number (775) 323 -3411, and will continue from day to day, except legal holidays, until

27 ///

28 ///

completed. The deposition will be recorded by stenographic means. A copy of the subpoena duces tecum is attached hereto.

DATED this 26th day of June 2012.

CATHERINE CORTEZ MASTO  
Attorney General for the State of Nevada

By:

  
C. WAYNE HOWLE  
Solicitor General

*Attorneys for Defendant  
Governor Brian Sandoval*

Nevada Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 26th day of June 2012, I served a true and correct copy of the foregoing NOTICE OF TAKING DEPOSITION OF AMY HARVEY, WASHOE COUNTY CLERK, on the following parties via first class mail, postage prepaid:

Carla Christofferson  
O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, CA 90071

Rahi Azizi  
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Shelbi Day  
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Vicki Beavers, SLS



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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

BEVERLY SEVCIK, et al.

Plaintiffs,

vs.

GOVERNOR BRIAN SANDOVAL, acting in  
his official capacity, et al.,

Defendants.

CASE NO. 2:12-CV-00578-RCJ-PAL

**NOTICE OF TAKING DEPOSITION  
OF DIANA ALBA  
CLARK COUNTY CLERK**

TO: ALL INTERESTED PARTIES

PLEASE TAKE NOTICE that on Monday, July 9, 2012 at 10 a.m., Defendants, Governor Brian Sandoval, acting in his official capacity, by and through counsel, Nevada Attorney General Catherine Cortez Masto and Solicitor General C. Wayne Howle, will take the deposition of Diana Alba, Clark County Clerk, upon oral examination pursuant to Federal Rules of Civil Procedure 26 and 30, before an officer authorized to administer oaths who is neither a party to nor interested in the above entitled action. The deposition will take place at Sunshine Reporting Services, 3770 Howard Hughes Parkway, Suite 300, Las Vegas, NV 89169, telephone number (702) 314-7200, and will continue from day to day, except legal

///

///



1 holidays, until completed. The deposition will be recorded by stenographic means. A copy of  
2 the subpoena duces tecum is attached hereto.

3 DATED this 21<sup>st</sup> day of June 2012.

4 CATHERINE CORTEZ MASTO,  
5 Attorney General for the State of Nevada

6 By: 

7 C. Wayne Howle

8 Solicitor General

9 Attorneys for Defendant

10 Governor Brian Sandoval

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12 100 North Carson Street  
13 Carson City, NV 89701-4717  
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 21<sup>st</sup> day of June 2012, I served a true and correct copy of the foregoing NOTICE OF TAKING DEPOSITION OF DIANA ALBA, CLARK COUNTY CLERK, on the following parties via first class mail, postage prepaid on:

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Vicki Beavers, SLS

Nevada Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

**US DISTRICT COURT FOR DISTRICT OF NEVADA**  
**Civil Action No. 2:12-CV-00578-RCJ-PAL**

*Beverly Sevcik and Mary Baranovich; Antioco Carrillo and Theodore Small; Karen Goody and Karen Vibe; Fletcher Whitwell and Greg Flamer; Mikyla Miller and Katrina Miller; Adele Terranova and Tara Newberry; Caren Cafferata-Jenkins and Farrell Cafferata-Jenkins; and Megan Lanz and Sara Geiger, Plaintiffs, v. Brian Sandoval, in his official capacity as Governor of the State of Nevada; Diana Alba, in her official capacity as Clerk for Clark County; Amy Harvey, in her official capacity as Clerk for Washoe County; and Alan Glover, in his official capacity as Clerk-Recorder for Carson City, Defendants.*

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